

WRONGFUL IMPRISONMENT COMPENSATION ACT

Phone: (517) 373-8080

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House Bill 4536 as reported without amendment

Sponsor: Rep. Stephanie Chang

Committee: Criminal Justice

Complete to 11-17-16

Analysis available at

<http://www.legislature.mi.gov>

BRIEF SUMMARY: The bill creates the Wrongful Imprisonment Compensation Act to allow a person who had been convicted under a state law and subsequently imprisoned in a state correctional facility for one or more crimes that he or she did not commit to bring an action against the state in the Court of Claims to seek compensation for that wrongful imprisonment.

FISCAL IMPACT: The bill will have an indeterminate fiscal impact on the state, as described in more detail later in the analysis.

THE APPARENT PROBLEM:

Currently, 30 states, the District of Columbia, and the federal government have some form of compensation for people who were wrongfully convicted of a crime and incarcerated. People exonerated of committing a crime and released from prison often have lost everything—family, friends, homes, cars, bank accounts. Though innocent, most have difficulty finding gainful employment. Many are in ill health from years of poor nutrition and inadequate medical care. The stress of being innocent-yet-found-guilty also takes a physical, emotional, and mental toll. Many advocates and others feel that Michigan should join with the majority of states and establish a program by which an innocent person who was wrongfully convicted can apply for a reasonable compensation for the years that were taken from them that would enable them to more quickly begin to rebuild their lives after release.

THE CONTENT OF THE BILL:

Under the Wrongful Imprisonment Compensation Act, a person who had been convicted under a state law and subsequently imprisoned in a state correctional facility for one or more crimes that he or she did not commit could bring an action against the state in the Court of Claims to seek compensation for that wrongful imprisonment. If enacted, the new act will apply both to persons who were wrongfully convicted before the act becomes law as well as to persons who are found to be wrongfully convicted after the act becomes law.

Prospectively, an action for compensation would have to be commenced within three years after entry of a verdict, order, or judgment that reversed or vacated the conviction with the charges being dismissed or the person being found not guilty on retrial. If the state challenged or appealed the verdict, order, or judgment, the three-year period would be tolled.

An individual who had been convicted, imprisoned, and released from custody *before* the bill became law could commence an action within three years of the bill's effective date.

Only the person who had been wrongfully imprisoned could file for compensation under the bill; the person's estate, personal representative of the estate, or any heir, devisee, beneficiary, or other person entitled under law to pursue a claim for damages, injury, or death of the person wrongfully imprisoned could not file a claim.

Other significant provisions of the bill include the following:

- ❖ A plaintiff (the person claiming to have been wrongfully imprisoned) would be entitled to receive compensation under the bill by proving, by a preponderance of the evidence, all of the following:
 - He or she was convicted of one or more state crimes and was sentenced to and served part of that sentence in a state correctional facility.
 - The conviction was reversed or vacated and either the charges dismissed or upon retrial the plaintiff was determined to be not guilty. (There would be no entitlement to compensation if the plaintiff had been convicted of another criminal offense arising from the same transaction and either that offense was not dismissed or the plaintiff was convicted of that offense on retrial.)
 - New evidence exists (e.g., any evidence not presented in the proceedings leading to the conviction including DNA, expert interpretation, and new testimony) demonstrating the plaintiff did not perpetrate the crime and was not an accomplice or accessory that results in the reversal or vacation of the charges or a gubernatorial pardon, and results in either dismissal of all of the charges or a finding of not guilty on all of the charges on retrial.
- ❖ Compensation would be awarded to a plaintiff found to be wrongfully convicted and imprisoned as follows:
 - \$60,000 for each year of imprisonment, regardless of whether the plaintiff had been released on parole or served the maximum sentence.
 - Economic damages—e.g., lost wages, actual costs such as attorney fees associated with the criminal defense or paid to prove innocence, and actual medical expenses related to the imprisonment required after release.
 - Reasonable attorney fees incurred in an action to obtain compensation under the bill. An award of attorney fees under the bill could not be deducted from the compensation awarded, and the attorney would not be entitled to receive additional fees from the plaintiff.
 - Reimbursement of any amount awarded and collected by the state under the State Correctional Facility Reimbursement Act. (This would be paid from the state General Fund and not reimbursed out of any state department's or agency's annual budget or current funding.)

- ❖ The compensation awarded above would not be subject to a limit on the amount of damages except as provided in the bill, could not be awarded for any time during which the plaintiff was imprisoned under a concurrent or consecutive sentence for another conviction, or for any injuries sustained while imprisoned (though a plaintiff could file a separate action for compensation because of injuries sustained during the imprisonment).
- ❖ Acceptance of an award under the bill must be in writing and would constitute a complete release of all claims against the state and be a bar to any action against the state based on the same subject matter.
- ❖ The compensation awarded would be subject to the payment of child support. The plaintiff would be liable for child support or arrearages except for that erroneously accrued while the plaintiff was imprisoned. Child support would be deducted before the plaintiff received any money from the award.
- ❖ Nothing in the bill precludes a plaintiff from bringing a lawsuit against other parties for the wrongful conviction or imprisonment (e.g., the local prosecutor or law enforcement agency investigating the crime). However, an award under the bill would be subject to setoff or reimbursement for damages obtained for the wrongful conviction or imprisonment from any other person.
- ❖ The bill would not impair or limit the right of a state or local government to collect a debt of the plaintiff from any award of compensation.
- ❖ If the plaintiff was determined to have been wrongfully convicted and imprisoned, the record of the arrest, fingerprints, conviction, and sentence would be expunged from the criminal record history and a document that is the subject of an order entered under this provision would be exempt from disclosure under the Freedom of Information Act.
- ❖ A copy of a complaint for compensation under the bill must be served on the attorney general and the office of the prosecuting attorney who prosecuted the crime; both would have an opportunity to contest the complaint.
- ❖ If the conviction had been for an assaultive crime or a serious misdemeanor, the victim would have to be notified in accordance with provisions of the William Van Regenmorter Crime Victim's Rights Act. The victim or victim's representative would have the right to appear at any proceeding concerning the complaint for compensation and to make a written or oral statement.

BACKGROUND INFORMATION:

House Bill 4536 and Senate Bill 291 were identical as introduced. Senate Bill 291 was subsequently amended before being passed by the Senate as an S-3 substitute.

Legislation to provide some form of compensation for those wrongfully convicted of crimes they did not commit has been introduced in each legislative session since 2005-2006.

FISCAL INFORMATION:

House Bill 4536 would have an indeterminate fiscal impact on the state, on the judiciary, and on local units of government. The fiscal impact on the state would depend on the number of eligible individuals making claims for compensation under the bill. Currently, data is not available on the number of individuals who were convicted of a crime, sentenced to a term of imprisonment, served at least part of the sentence, and had the judgment of conviction reversed or vacated because they were later found not guilty.

Under the bill, the state would be responsible for paying the following court-awarded damages: \$60,000 for each year of wrongful imprisonment; economic damages, including, but not limited to, lost wages, actual costs including attorney fees associated with the initial criminal defense, actual costs paid to prove the individual's innocence, and actual medical expenses related to the imprisonment required after release; and reimbursement of any amount collected by the state, from the individual while imprisoned, under the State Correctional Facility Reimbursement Act.

The bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on the number of actions for damages and how the provisions of the bill affected caseloads and related administrative costs.

The bill could have an indeterminate fiscal impact on local units of government, and would depend on further actions taken by individuals wrongfully imprisoned and on the outcomes of those actions, (i.e., lawsuits against witnesses, prosecutors, police officers, etc.).

ARGUMENTS:

For:

Sometimes, the criminal justice fails in its mission to protect the innocent, find justice for victims, and prosecute the guilty. Whether it is because of faulty science, misidentification, witnesses who lie, or misconduct on the part of law enforcement officers or prosecutors, sometimes the system doesn't work and an innocent person is found guilty of a crime he or she did not commit. In cases where a person is able to prove innocence and be released from prison, life afterwards is not easy.

According to advocates for the wrongfully convicted, many lose all assets while incarcerated, including homes, cars, bank accounts, personal belongings, and custody of children. A person who is exonerated may have nothing with which to begin a new life. With outdated job skills and possible health or emotional needs, exonerees need resources to access the services that will enable them to rebuild their lives, say knowledgeable observers. The bills would provide a reasonable amount of financial compensation for an individual whose life was disrupted due to a wrongful conviction and imprisonment.

House Bill 4536 would establish the statutory framework for reasonable compensation. Compensation is not automatic. The bill establishes hurdles to overcome, thresholds to meet in proving innocence. For those few who are able to prove their innocence, the bills represent hope for the future and fair compensation for what was wrongly taken away. Some supporters of the legislation believe that compensating exonerees in this manner also may decrease the number of lawsuits initiated against law enforcement agencies and county prosecutors, as any money from a judgment or settlement awarded by such a lawsuit would reduce the compensation an exoneree could obtain from the state under this legislation, and the compensation could be awarded sooner than it would in response to a traditional lawsuit. Coupled with the fact that compensation under the bill should be less than what is awarded and expended in litigation or settlements, the bill may serve to reduce the overall impact on taxpayers. Regardless, enactment of a fair compensation statute for the wrongfully incarcerated, advocates say, is simply the right thing to do.

For:

The bill is not expected to be exceedingly expensive to implement as improved investigative techniques and DNA evidence results in few people who are newly convicted being later proven to be innocent. By some estimates, perhaps fewer than 40 current exonerees would be eligible to be compensated under the bill. Because more sensitive DNA tests and other modern forensic investigative tools are now being used, exonerations may be even rarer in the future. However, whenever justice fails the innocent, the situation should be made right.

For:

The current iteration of legislation to create the Wrongful Imprisonment Compensation Act is superior to earlier versions. For example, some earlier versions only applied to exonerations based on DNA or "equally reliable scientific or physical evidence" and thus excluded erroneous convictions not based on faulty DNA testing. Here are two stories from committee testimony:

Quentin Carter's wrongful conviction and imprisonment was due to a lie told by the victim. Mr. Carter was convicted at the age of 16 of the rape of a 10-year-old based entirely on her testimony. He served over 17 years of a 6–20-year sentence before being released on parole. He was cleared in 2015 when the victim, now an adult, felt safe to tell the truth (though records show she had on two occasions told prosecutors Mr. Carter was innocent but was not believed). The man who had committed the rape was her mother's boyfriend at the time. Under ongoing threats of violence against her, her mother, and her siblings, the victim had been forced to implicate Mr. Carter against her will and to keep silent until the true perpetrator was eventually arrested and imprisoned for murder.

Julie Baumer was wrongfully convicted when medical "experts" misinterpreted diagnostic tests and concluded that her infant nephew, who she was in the process of adopting, was a victim of "shaken baby syndrome." She was convicted and imprisoned for more than four years for child abuse. Ms. Baumer was exonerated after an advocate contacted a new lawyer, who sent the baby's brain scans to pediatric neuroradiologists; the specialists found evidence that the baby had suffered a stroke unrelated to abuse.

The bill appropriately applies the ability to seek compensation to such cases.

Against:

Many states that provide compensation for wrongful convictions and imprisonments exclude cases when individuals contributed to their own conviction. For instance, making a false confession to cover for another person, tampering with evidence or an eye witness, deliberately misleading the police, or otherwise implicating oneself should be barriers to obtaining compensation under the act. Of course, those who were coerced, tricked, or misled into confessing when innocent, or subjected to police or prosecutorial misconduct, should still be eligible to apply for compensation if they can prove they were innocent of the charge.

POSITIONS:

A representative of the Michigan Innocence Clinic, University of Michigan Law School, testified in support of the bill. (6-16-15)

A representative of the Cooley Innocence Project, Western Michigan University Cooley Law School, testified in support of the bill. (6-16-15)

A representative of Proving Innocence testified in support of the bill. (6-16-15)

The Michigan Catholic Conference indicated support for the bill. (6-16-15)

The ACLU of Michigan indicated support for the bill. (6-15-15)

The Libertarian Party of Michigan provided written testimony in support. (6-16-15)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.